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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of

Computer III Further Remand
Proceedings: Bell Operating
Company Provision of Enhanced
Services

CC Docket No. 95-20

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REPLY COMMENTS OF
THE ALARM INDUSTRY COMMUNICATIONS COMMITTEE

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TABLE OF CONTENTS

SUMMARY.....	iii
BACKGROUND.....	2
PROCEDURAL HISTORY.....	4
DISCUSSION.....	7
I. THE COMMISSION HAS MISINTERPRETED THE COURT’S REMAND...	7
II. THE COMMISSION INCORRECTLY PLACES THE BURDEN ON THE ESPs TO IDENTIFY THE BENEFITS OF STRUCTURAL SEPARATION.....	8
III. THE COMMISSION’S COST/BENEFIT ANALYSIS MUST FOCUS ON THE PUBLIC INTEREST OVER THE LONG TERM.....	9
IV. STRUCTURAL SEPARATION REQUIREMENTS BETTER SERVE THE PUBLIC INTEREST.....	10
A. Local Exchange Competition	10
B. The Inadequacy of Nonstructural Safeguards.....	12
C. The Efficiencies of Abandoning Structural Separation Are Illusory.....	14
CONCLUSION.....	16

SUMMARY

The AICC is a subcommittee of the Central Station Alarm Association. Its membership constitutes over 90 percent of the alarm security services in the United States. Over the years, the AICC has actively participated with the Commission in the development of regulation for the enhanced services industry. The AICC is keenly interested in the development of such regulation because it is heavily dependent on the Bell Operating Companies (BOCs), who are actual and potential competitors to the AICC, for access to essential services and local exchange facilities.

In these comments, the AICC submits that pursuant to the Ninth Circuit's decision in *California III*, the Commission's *Computer II* regime still serves as the applicable law for the provision of enhanced services by BOCs. *Computer II* requires the BOCs to provide enhanced services and basic services through separate subsidiaries. This requirement was adopted in order to guard against potential anticompetitive BOC behavior. In *Computer III*, however, the Commission attempted to lift this requirement on the grounds that (1) the risks of anticompetitive behavior were less due to the introduction of local exchange competition; and (2) the burdens of structural separation prevented the BOCs from providing certain enhanced services.

AICC submits that these conclusions no longer reflect reality, if indeed, they ever did. First, the AICC asserts that because there are no viable alternatives to the BOCs' local exchange facilities, any local exchange competition that may exist is irrelevant for purposes of the enhanced services industry. Second, the AICC asserts that industry experience under *Computer III* proves that nonstructural safeguards are presently insufficient to guard against anticompetitive behavior. Finally, the AICC takes issue with the Commission's claim that

structural separation requirements impose undue burdens on the BOCs, which in turn inhibit them from introducing new enhanced services offerings to the public.

Accordingly, since the underlying premises of Computer III fly in the face of market reality, AICC submits that it is incumbent on the Commission and the BOCs to prove that market realities have changed before any lifting of structural safeguards takes place. Proof on this score is currently lacking.

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The Alarm Industry Communications Committee (AICC), by its attorneys, hereby submits reply comments in response to the Commission's *Notice of Proposed Rulemaking*, FCC 95-20, released February 21, 1995 (NPRM), in the captioned proceeding.

The AICC is a subcommittee of the Central Station Alarm Association. Its members consist of ADT Security Systems, Inc.; Honeywell Protection Services; the National Burglar and Fire Alarm Association; National Guardian Corporation; Rollins, Inc.; Wells Fargo Alarm Services; the Security Industry Association and Security Network Associates. The membership represented by the AICC constitutes over 90 percent of the alarm security services in the United States. AICC members are highly dependent on the Bell Operating Companies (BOCs) for essential services and interconnection to local exchange facilities, and have participated extensively over the years in the Commission's Computer II and Computer III proceedings.

BACKGROUND

As with other independent enhanced service providers (ESPs), the alarm industry also finds itself in the position of having to at once compete with BOCs and rely upon them for access to essential local exchange facilities.¹ Past experience with the BOCs under these conditions has demonstrated that the BOCs' monopoly power can be abused for the purposes of gaining unfair competitive advantages. The alarm industry is particularly susceptible to such BOC abuse because it is wholly dependent on the BOCs' local facilities for the provision of its services.

Concerns about unfair BOC practices vis-a-vis the Alarm Industry were comprehensively documented in a 1987 report promulgated by the U.S. Department of Justice, *The Geodesic Network: 1987 Report on Competition in the Telephone Industry (Huber Report)*. The report found, *inter alia*, that the alarm industry was especially dependent on the BOCs for the provision of private line services and even more so for private lines services relying upon critical maintenance, testing, and repair functions. After reviewing the barriers that exist to telecom competition, the report concluded that (1) the risks of access discrimination by BOCs were "more credible" vis-a-vis the alarm industry;² and (2) that the opportunities for cross-subsidization by BOCs in the areas of alarm sales,

¹ To date, only one regional BOC, Ameritech, has entered the domestic alarm market. Ameritech has filed a Comparably Efficient Interconnection (CEI) plan in accordance with the FCC's *Memorandum Opinion and Order*, __ FCC Rcd __, 1995 FCC LEXIS 217, 76 Rad. Reg. 2d (P&F) 1536, January 11, 1995, at para. 2, n. 5; On May 3, 1995 the AICC filed comments opposing that plan. These comments are directed to the issue of whether *Computer II's* structural safeguards should be abandoned over the long term.

² *Huber Report*, at 13.5, 13.7; *See also*, Comments of The Information Technology Association of America at p. 8.

marketing, installation, and monitoring were particularly high.³

Consequently and unsurprisingly, the alarm industry is very concerned with the Commission's reversal of policy that replaces the Computer II structural separation regime with the Computer III nonstructural safeguard regime. The AICC submits that the nonstructural safeguards provided for in the Computer III regime are inadequate to protect the alarm industry from BOC monopoly abuse. Further, the AICC also submits that nonstructural safeguards should only be implemented, if at all, when it is established that there is effective competition in the local service market and when it is established that such safeguards would truly benefit the public welfare.⁴

The AICC submits that the burden of establishing whether effective competition exists and whether nonstructural safeguards would benefit the public welfare must be on the BOCs and, indeed, the Commission. The AICC believes that while the risk of BOC abuse remains a market reality, it is incumbent on the BOCs and the Commission to prove that discriminatory access to the local exchange and cross-subsidization along with other abusive practices are things of the past.

³ Id. at 13.9, 13.10.

⁴ See, Comments of the New York State Department of Public Services (NYDS) in Computer III Further Remand Proceedings: BOC Provision of Enhanced Services, CC Docket No. 95-20. ("The NYDS states that the requirement for separate subsidiaries should be dependent on the state of competition in the local exchange service market, the state of competition in the local exchange service market, and the attributes of the specific service under consideration.")

PROCEDURAL HISTORY

In Computer II⁵, the Commission established a regulatory regime for the provision of enhanced services requiring the BOCs to set up separate subsidiaries for the provision of enhanced services and basic services.⁶ The rationale for this requirement was to guard against two potential BOC abuses: (1) the Commission was concerned that the BOCs would use their local exchange monopoly to gain unfair competitive advantages by way of access discrimination; and (2) the Commission was equally concerned that the BOCs could cross-subsidize their enhanced service offering with monopoly profits derived from the local exchange business.⁷

Less than two years after imposing these structural safeguards the Commission, in its Computer III order, reversed its policy and decided to replace structural safeguards with nonstructural safeguards.⁸ The Commission justified this policy reversal on two principal

⁵ Amendment of Section 64.702 of the Commission's Rules and Regulations, 77 FCC 2d 384 (1980), *mod. on recon.*, 84 FCC 2d 50 (1981), *mod. on further recon.*, 88 FCC 2d 512 (1981), *aff'd sub nom. Computer Communications Industry Ass'n. v FCC*, 693 F.2d 198 (D.C.Cir. 1982), *cert denied*, 461 U.S. 938 (1983).

⁶ Policy and Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services and Cellular Communications Equipment by the Bell Operating Companies, CC Docket No. 83-115. Report and Order, 95 F.C.C.2d 1117, 1120, para. 3 (1984) (BOC Separation Order).

⁷ Policy & Rules Concerning the Furnishing of Customer Premises Equipment, Enhanced Services & Cellular Communications by the Bell Operating Companies, 95 F.C.C.2d 1117, 1122 (1983).

⁸ See, Amendment of Section 64.702 of the Commission's Rules and Regulations, CC Docket No. 85-229, Phase I, 104 FCC 2d 958 (1986), *on recon.*, 2 FCC Rcd 3035 (1987); Phase II, 2 FCC Rcd 3072 (1987)(hereinafter "Computer III"), *vacated and remanded sub nom., California v. FCC*, 905 F.2d 1217(9th Cir. 1990)("California I"); See also Report and Order, Computer III Remand Proceeding: Bell Operating Company Safeguards, 6 FCC Rcd 7571 (1991) (BOC Safeguards Order) *partly vacated sub nom. California v. FCC*, 39 F.3d 919 (9th Cir. 1994)("California III").

findings: First, the Commission found that market competition in the local exchange had increased since AT&T's 1984 divestiture of the BOCs and, consequently, the threat of BOC monopoly abuse could be controlled by nonstructural safeguards; Second, the Commission found that structural separation safeguards resulted in many BOC "inefficiencies" which hindered the BOCs from developing the enhanced services market.⁹ Thus, the Commission believed that nonstructural safeguards could better serve the public interest.¹⁰

Under Computer III, the Commission decided to eliminate structural separation once certain nonstructural safeguard requirements were met. The Computer III nonstructural safeguards included, *inter alia*, the filing of service specific Comparably Efficient Interconnection (CEI) plans, full Open Network Architecture (ONA), network disclosure requirements, and customer proprietary network information (CPNI) rules.¹¹ As noted, once these safeguard requirements were met, structural separation would be eliminated.¹²

The Ninth Circuit Court of Appeals in California I, found that the Computer III safeguards were inadequate to protect against anticompetitive behavior.¹³ In reaching this conclusion the Court noted that the Commission's record did not support the conclusion that market and technological changes had reduced the danger of cross-subsidization. Moreover, the Commission had not explained how cost-accounting safeguards could effectively guard against BOC cross-subsidy. The Court was struck by the fact that the Commission had reversed course so quickly on the cross subsidy issue having only 14 months beforehand

⁹ Computer III Report and Order, 104 F.C C.2d at 1006.

¹⁰ *NPRM* at 25.

¹¹ *NPRM* at para. 5.

¹² Computer III, 104 FCC 2d at 1067-68.

¹³ California v. FCC, 905 F.2d 1217.

determined that cost-accounting safeguards were ineffective against cross-subsidy.

Accordingly, the Court vacated and remanded to the Commission the Computer III order.¹⁴

Shortly thereafter, the Commission entered an order granting the BOCs waivers from the structural separation requirements. The Commission also adopted the BOC Safeguard Order which provided for additional safeguards¹⁵. On the basis of these additional safeguards, the Commission revisited its cost/benefit analysis and concluded that the lifting of the structural separation requirement would better serve the public interest.

Again, however, the Ninth Circuit reversed. In California III¹⁶ the Court observed that the Commission had, without explanation, retreated from its original requirement that BOCs submit ONA plans requiring "fundamental unbundling" of their networks.¹⁷ The Court noted that the Commission failed to explain how its new diluted ONA policy could still safeguard against access discrimination. Since the original ONA policy adopted fundamental network unbundling as a prerequisite for lifting structural separation requirements, the Court found the Commission's overall cost/benefit analysis to be fundamentally flawed. Accordingly, the California III Court vacated the BOC Safeguard Order leaving the Computer II regime intact

¹⁴ California v. FCC, 905 F.2d 1232-39.

¹⁵ Report and Order, In the Matter of Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, CC Docket 90-623, 6 F.C.C.R. 7571 (1991).

¹⁶ California v. FCC, 39 F.3d 919 (9th Cir. 1994)(California III)

¹⁷ Id. at 928.

DISCUSSION

I. THE COMMISSION HAS MISINTERPRETED THE COURT'S REMAND

The issue on remand from the Ninth Circuit is whether the Computer II regime requiring structural separation should be replaced by the Commission's Computer III regime requiring nonstructural safeguards. However, according to the NPRM, the Commission assumes that the Computer II regime has already been replaced by the CEI waivers¹⁸ which it granted to the BOCs. Consequently, according to the Commission, the issue on remand is whether the remaining structural separation requirements should be lifted.¹⁹

Specifically, in the NPRM, the Commission states that the issue on remand is "whether we should totally lift structural separation requirements, as applied to BOC provision of enhanced services, given the state of network unbundling under ONA." The Commission then states, as if on its own initiative, that it will "solicit comments, broadly, on whether structural separation should be *reimposed* for some or all BOC enhanced services."²⁰ However, as shown below, there can be no *reimposition* of structural separation if the status quo is the Computer II regime in the first place.

In both California I and California III, the Ninth Circuit unequivocally retained the Computer II regime as the status quo, having rejected Computer III on both occasions as unsupported by the record. In California I, the Ninth Circuit set aside the Commission's

¹⁸ Memorandum Opinion and Order, ___ FCC Rcd ___, 11995 FCC LEXIS 217, 76 Rad. Reg. 2d (P&F) 1536, January 11, 1995.

¹⁹ See also, Comments of the Information Technology Association of America filed April 7, 1995 at page 12 (The Ninth Circuit's decision restores the structural separation requirements of Computer II)

²⁰ NPRM at para. 12.

Computer III order because the Commission "had not supported its conclusions regarding prevention of cross-subsidization ...[and therefore] its overall [cost/benefit] analysis was flawed ".²¹

In California III the Ninth Circuit set aside the Commission's BOC Safeguard Order because the Commission:

had failed to provide support or explanation for some of its material conclusions regarding prevention of access discrimination... and it never explains why it now authorizes lifting structural separation requirements when it recognizes that its assumptions in Computer III regarding ONA have not proven correct, and that fundamental unbundling is not attainable at this time.....

since fundamental unbundling is no longer regarded as attainable, the FCC should have adjusted its cost benefit analysis accordingly. [Accordingly], the FCC's cost benefit analysis is flawed we set aside the [BOC Safeguard Order] as arbitrary and capricious.²²

Thus, contrary to the Commission's assertion, the actual issue on remand is not whether structural separation requirements should be reimposed but rather whether they should be lifted at all and, if so, the Commission has the burden of establishing the record.²³

II. THE COMMISSION INCORRECTLY PLACES THE BURDEN ON THE ESPs TO IDENTIFY THE BENEFITS OF STRUCTURAL SEPARATION.

The common thread that runs through both California I and California III is that the Commission cannot reverse its Computer II structural separation policy without adequately supporting such a reversal with evidence. This notion comports with the common sense principle that the burden of proof should be placed upon those who want to change the status quo. Since California III makes Computer II the status quo, the Commission is incorrect

²¹ California I, 905 F.2d at 1232-39.

²² California III, 39 F.3d at 930.

²³ See, MCI Comments at p. 6; CompuServe Comments at pp. 12-15.

when it requires in the NPRM that "parties who propose a *reimposition* of structural separation,...[should] identity the benefits that they believe will accrue for the provision of enhanced services to consumers from such action "²⁴ The fact is, the burden is not on those who want to reimpose structural safeguards because those safeguards are already imposed. Rather, the burden is on those who want to impose nonstructural safeguards, namely, the Commission and the BOCs.

III. THE COMMISSION'S COST/BENEFIT ANALYSIS MUST FOCUS ON THE PUBLIC INTEREST OVER THE LONG TERM

In adopting its *Computer III* order the Commission stated that the BOCs were experiencing certain "inefficiencies" due to structural separation requirements. These inefficiencies allegedly hindered the BOCs from introducing new enhanced service offerings that would benefit the public. The AICC respectfully submits that the FCC's cost/benefit analysis has, in the past, myopically focused on what are, at best, monopoly efficiencies and, at worst, simply cross-subsidies. The AICC believes that the Commission is now presented with an excellent opportunity to re-focus its efficiency assessment on those long term efficiencies arising, instead, from a competitive environment.

It is recognized that certain monopolies may achieve efficiencies in the form of scale economies. Indeed, as the Commission well knows, the U.S. telephone system was devised on this so-called "natural monopoly" model. However, it is also recognized that this model has long since been discredited as a plausible basis for telecommunications public policy. Nevertheless, the purported "efficiencies" suggested in *Computer III* have the same earmarks of this now discredited public policy

²⁴ NPRM at para. 13.

For example, according to the Selwyn Report²⁵ there are essentially two categories of costs associated with setting up new subsidiaries: (1) the costs associated with start-up ventures; and (2) the costs incurred by losing the ability to market services jointly (i.e. cross-subsidy). Consequently, the costs that would be saved would only be available to monopoly players such as the BOCs. Giving the BOCs the opportunity to exploit such "monopoly efficiencies" would greatly disadvantage the ESPs who would have to bear start-up costs without the having the same benefit of marketing services jointly.

IV. STRUCTURAL SEPARATION REQUIREMENTS BETTER SERVE THE PUBLIC INTEREST.

In adopting Computer III, the Commission found that nonstructural safeguards would better serve the public interest because 1) nonstructural safeguards could guard against monopoly abuse given the introduction of competition in the local exchange; and 2) nonstructural safeguards were less burdensome than structural safeguards, thus allowing the BOCs to realize certain market "efficiencies" that otherwise would not have been feasible.²⁶ As will be demonstrated below none of these findings were correct.

A. Local Exchange Competition

The local exchange market is not competitive.²⁷ The BOCs still hold virtual monopolies over the nation's local exchange facilities and they still serve about three-

²⁵ See, CompuServe comments at pages 24-25 discussing the Selwyn Report; Selwyn, The Costs of Separate Subsidiaries, Economics and Technology, Inc. (November 1991).

²⁶ NPRM at 25.

²⁷ See, ONA: A Promise Not Realized - Reprise. Hatfield Associates, Inc., April 6, 1995 at 8. (Hereinafter the Hatfield Report)

quarters of the nation's lines.²⁸ Potential competitors to BOCs include Competitive Access Providers, cable companies, Personal Communications Services and electric utility companies.²⁹ However, none of these competitors possess all the components of the telephone network.³⁰ Consequently, the enhanced service industry is still heavily dependent on the BOC for effective local exchange access.³¹ As the California III Court noted, this dependency is very real, and provides the BOCs with the incentive and the ability to abuse their monopoly control to the detriment of the ESPs and the public interest.³² Thus, the Commission's conclusion that the risks of anticompetitive behavior have diminished ignores this market reality. Likewise, the BOCs' unsurprising claims that the risks of anticompetitive behavior are today, merely hypothetical, are also contrary to market reality.³³

The MemoryCall case, discussed in California III, is also illustrative of this market reality.³⁴ In MemoryCall the Georgia Public Service Commission found that BellSouth had

²⁸ See, Telephone Lines and Offices Converted to Equal Access, Industry Analysis Division, Common carrier Bureau, FCC, FCC Document, November 1994 at page 1. See also, S. 652, 104th Cong., 1st Sess., § 5 (1995) (findings included in Senator Pressler's telecom reform legislation stating "[local] telephone service is predominantly a monopoly service").

²⁹ Hatfield Report at page 2.

³⁰ Id.

³¹ See, Compuserve Comments submitted April 7, 1995 at page 18. (Compuserve remains almost totally dependent on the BOCs' local exchange facilities for the distribution of its service in the areas served by the BOCs.)

³² California III, 39 F.3d at 929 (stating BOCs have the incentive to discriminate and the ability to exploit their monopoly control over the local networks to frustrate regulators' attempts to prevent anticompetitive behavior).

³³ A summary of various instances of anticompetitive BOC practices, see the comments submitted by the Information Technology Association of America, dated April 7, 1995 at pg. 44.

³⁴ In the Matter of the Commission's Investigation into Southern Bell Telephone and Telegraph Company's Trial Provision of MemoryCall Service, Docket No. 4000-U (Ga. PSC June 4, 1991)("MemoryCall").

engaged in anticompetitive conduct in offering its voice messaging service. It determined that BellSouth had (1) erected technical barriers to deprive competitors of the means of accessing the local network; (2) had refused to allow competitors to co-locate their voice mail equipment in the carrier's central office while affording its own operations such an advantage; and (3) it had manipulated the timing of its development and unbundling of network features in order to gain a competitive advantage for its service.³⁵

The California III Court found it noteworthy that this activity occurred pursuant to a Commission approved CEI plan and that it took the Georgia Public Service Commission to detect this activity.³⁶ Indeed, the District Court having continuing jurisdiction over the U.S. v. AT&T Consent Decree also noted anticompetitive BOC conduct that had occurred in voice messaging and other markets.³⁷

These activities would not have been possible without BOC monopoly power over the local exchange upon which voice messaging providers and other similar competitors were dependent. The Commission need not look far to realize that effective competition is not yet a reality. Thus, its earlier finding that sufficient local competition exists to warrant abandoning Computer II is simply wrong

B. The Inadequacy of Nonstructural Safeguards

In Computer II the Commission noted that although nonstructural safeguards could help detect anticompetitive practices such as cross-subsidization or predatory pricing, they

³⁵ Id.

³⁶ BellSouth Plan For Comparably Efficient Interconnection for Voice Messaging Service, 3 FCC Rcd 7284 (1988).

³⁷ United States v. Western Electric, 767 F.Supp. 308, 322-25 (D.D.C. 1991).

could not prevent such practices.³⁸ The Commission went on to say that only a structural separation requirement could guard against cross-subsidy.³⁹ As with the MemoryCall case, recent experience shows that the Commission's early concerns, vis-a-vis the efficacy of nonstructural safeguards, were well-founded.

For example, just last March the Commission's cost-accounting rules were shown to be ineffectual. All seven BOCs were the subject of Commission orders identifying a number of apparent violations of the Commission's accounting rules. As noted in the comments submitted by CompuServe, certain BOCs such as US West, also apparently violated these rules for non-regulated operations.⁴⁰ The Commission should take a hard look at this development, particularly in light of the fact that some of these violations occurred so long ago that they may be beyond the statute of limitations.⁴¹

Indeed, the ability of the Commission to detect violations at all, through its auditing functions, is suspect. The NYNEX purchasing affair is a case in point. In 1989, improper NYNEX purchasing practices (involving regulated and affiliated, non-regulated operations) were reported to have occurred. NYNEX subsequently entered into a consent decree which, *inter alia*, resulted in NYNEX's "voluntary" contribution to the U.S. Treasury of \$1.49 million.⁴² Interestingly enough, it was the newspapers and not the Commission's auditors who uncovered this event.⁴³

³⁸ Computer II Order, 77 F.C.C.2d at 464.

³⁹ Id.

⁴⁰ CompuServe comments at 28.

⁴¹ Id. at 31.

⁴² New York Telephone Co. Order, 5 F.C.C. Rcd. No. 21, 5892 (Oct. 3, 1990).

⁴³ The Boston Globe, Thursday, City Edition, page 1, December 22, 1988.

Against this background, Computer III's abandonment of structural safeguards can hardly be characterized as a successful experience. The Commission lacks the resources to effectively enforce its own rules, which in turn have to rely heavily on self-reporting by the BOCs. Accordingly, the AICC respectfully urges the Commission to recognize the gulf between the Commission's early aspirations and the reality of experience since.

C. The Efficiencies of Abandoning Structural Separation Are Illusory

As previously noted, the Commission's Computer III policy is grounded, in part, upon the notion that nonstructural safeguards would guard against anticompetitive BOC behavior while at the same time allowing them to realize certain efficiencies. Experience has not proven this to be the case. New technology demonstrates that the efficiencies expected by the Commission have neither come to pass

As discussed above in Section III, the costs associated with structural separation are not costs in the true sense of the term, but rather, are foregone "efficiencies" that may also be characterized as cross-subsidy.⁴⁴ In that section it was also noted that factoring these costs into the Commission's cost/benefit analysis would, in effect, be a harkening back to an earlier public policy which has long since been discredited. Indeed, pending legislation requiring separate subsidiaries for BOC enhanced services reflects Congress' current judgement that any foregone efficiencies arising as a result are negligible.⁴⁵

Aside from wrong-headed notions of economic efficiencies, Computer III's

⁴⁴ See, Selwyn Report at 7-8, discussed in Compuserve Comments at page 25.

⁴⁵ See, e.g., S. 652 104th Cong., 1st Sess. (1995).

underpinnings have also been undercut by technological advances. Specifically, as discussed in the Comments of the Ad Hoc Telecommunications Users Committee, network advances have rendered even more illusory Computer III's assumptions about operational efficiencies stemming from integrated operations. The principal network advance is represented by the Advanced Intelligent Network (AIN), which centralizes network intelligence and removes functions formerly performed at the central office switching level.

The Commission has recognized that AIN technology may offer unique opportunities to third parties, including enhanced service providers.⁴⁶ AICC agrees with Ad Hoc's observation that AIN has "virtually eliminated" the so-called efficiencies of integration, since enhanced operation will easily provide service from remote locations.⁴⁷ Accordingly, the AICC submits that AIN technology, along with other network advances such as SS7 technology, have undercut Computer III's efficiency assumptions.

As a final observation on the subject of the costs and efficiencies, vis-a-vis the calculus of structural separation, AICC takes issue with the notion that costs associated with returning to a structurally separated environment are somehow relevant in this remand proceeding.⁴⁸ The California III Court has plainly found that the Commission's abandonment of structural separation was ill conceived. It is bootstrap logic at its best to now suggest that returning to the *status quo ante* ordered by the Court, imposes costs, which in turn, justify the same Computer III result reversed by the Court.

In the same vein, AICC submits that the Commission's concerns about imposing

⁴⁶ See, Intelligent Network, Notice of Proposed Rulemaking, 8 F.C.C. Rcd 6813 (1993).

⁴⁷ Ad Hoc comments at page 8.

⁴⁸ NPRM at para. 40


costs on consumers of BOC enhanced services are misplaced.⁴⁹ All of the enhanced service markets with which AICC is familiar are vibrantly competitive. If such "costs" are indeed passed through, competitive forces will protect consumers. In sum, AICC submits that the costs of returning to structural separation are irrelevant for purposes of conducting a cost/benefit analysis. These costs were wrongly foregone in the first instance, and consumers will not suffer if they are incurred now.

CONCLUSION

For the forgoing reasons, the AICC respectfully requests the Commission to require the BOCs to provide enhanced services through structurally separate business units. Structural separation offers the simplest, most efficient and effective protection against anticompetitive behavior.

Respectfully submitted,

THE ALARM INDUSTRY COMMUNICATIONS COMMITTEE

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⁴⁹

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